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No. 120.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

CHARLES ZARTARIAN, APPELLANT,
v.
GEORGE B. BILLINGS, UNITED STATES COMMISSIONER OF IMMIGRATION AT THE PORT OF BOSTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

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CHARLES ZARTARIAN, APPELLANT,
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If the meaning of section 2172, Revised Statutes, were doubtful, its practical construction by the State Department, which is so frequently called upon to decide questions of citizenship, would be entitled to great weight. (See *United States* v. *Alger*, 152 U. S., 384, 397; *Swift* v. *United States*, 105 U. S., 691, 695; *United States* v. *Graham*, 110 U. S., 219; and *United States* v. *Tanner*, 147 U. S., 661.)

To rule that the girl Mariam is a citizen of the United States, would upset the established practise of the State Department for sixty years. See Moore's International Law Digest, vol. 3, p. 464,

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sec. 413, and p. 487 and authorities there cited; also letter of Mr. Evarts, Secretary of State to Mr. Caldwell, March 6, 1880 (MSS. Dom. Let.), which reads as follows:

(Copy.)

DEPARTMENT OF STATE,
Washington, 6 March, 1880.

G. W. CALDWELL, Esq.,
Wellsburg, Brooke Co., West Virginia.

SIR: I have received your letter of the 3d instant written on behalf of Mr. C. Smeidel, and presenting the question of the status of his minor son.

It appears from your statement that Mr. Smeidel, a native of Prussia, came to the United States in 1874, settled in West Virginia, and is now a naturalized citizen of the United States; that he left behind him a minor son, who has always resided in Prussia, and has now attained the age of 18 years; that Mr. Smeidel has recently sent to his son a draft to defray his expenses to this country, whither he wishes him to come; and that on the son's attempting to leave Prussia the authorities there prevented his departure on the ground that he is liable to military service, "although not as yet drafted." In view of these facts, Mr. Smeidel asks if, by any law or treaty, the son can be demanded of the Prussian Government.

In reply, I have to inform you that neither law or treaty covers the case of young Smeidel.

> Section 2172 of the Revised Statutes provides that children under the age of 21 years at the time of the naturalization of their parents "shall, *if dwelling in the United States*, be considered as citizens thereof." Mr. Smeidel's son is not dwelling within the jurisdiction of the United States, and has never been outside of the jurisdiction of the country of his nativity. He has, it would seem, attained the age when every Prussian, under the laws of Prussia, becomes liable to military duty, and the fact of the naturalization of the father in a foreign country does not exempt the son, a native Prussian, from the operation of those laws, he being in Prussian jurisdiction.
>
> On the facts as stated there is, therefore, no ground for the intervention of this Government in young Smeidel's behalf.
>
> I am, sir, your obedient servant,
>
> WM. M. EVARTS.

Another case in point is that of Anton Macek, who was born in Vienna, of Austrian parents, August 13, 1875:

> In May, 1884, his father emigrated to the United States with his entire family and had resided in Chicago ever since. Before his naturalization and while the son Anton was yet a minor, August 16, 1894, his father sent him to Austria to be educated. The father was naturalized in Chicago, October 22, 1894, that is, subsequent to the return of the son Anton to Austria, where he had since remained. Upon application for a passport it

was held that Anton Macek was not entitled to claim citizenship in the United States for the reason that "he was not dwelling in the United States at the time of his father's naturalization, he has not at any time since dwelt in the United States, and of course is not now dwelling here." (Van Dyne on Citizenship, p. 115.)

ALFORD W. COOLEY,
Assistant Attorney-General.

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